

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

GALEANO'S TRUCKING and
FRANCISCO GALEANO
Respondents.

Case Nos.: I-00-11097
I-00-11071

FINAL ORDER

I. Introduction

On March 9, 2001, the Government served a Notice of Infraction upon Respondents Galeano's Trucking and Francisco Galeano alleging that they violated 20 DCMR 900.1, which prohibits, with certain exceptions, motor vehicles from idling their engines for more than three minutes while parked, stopped or standing. The Notice of Infraction charged that the violation occurred on February 14, 2001 in the 1200 block of 1st Street, N.E., and sought a fine of \$500.

Respondents did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e), 2-1802.05). Accordingly, on April 13, 2001, this administrative court issued an order finding Respondents in default, assessing the statutory penalty of \$500

required by D.C. Official Code § 2-1801.04(a)(2)(A) and requiring the Government to serve a second Notice of Infraction.¹

On April 19, 2001, Respondents filed an untimely plea of Deny to the first Notice of Infraction. I held a hearing on June 28, 2001. Jacques Lerner, Esq. appeared on behalf of the Government. Respondent Francisco Galeano appeared on his own behalf, and his son Alex Galeano, an officer of Respondent Galeano's Trucking, appeared on its behalf.

Based upon the testimony of the witnesses at the hearing, my evaluation of their credibility and the evidence admitted into the record, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

On February 14, 2001, Respondent Francisco Galeano parked a tractor-trailer that he was operating on behalf of Respondent Galeano's Trucking in the 1200 block of 1st Street, N. E. Neil Williams, an inspector employed by the Department of Health, observed the truck parked at that location with its engine idling. He clocked the time that the engine was running, and recorded that it was from 8:50 to 8:56 A.M. According to Mr. Williams, the driver remained in the truck for the entire six-minute period.

Mr. Galeano testified that he had picked up a load from a nearby solid waste transfer station and that he parked at the location observed by Mr. Williams in order to perform a

¹ The Government served a second Notice of Infraction on May 4, 2001. Because Respondents already had pleaded to the first Notice of Infraction by that date, the second Notice of Infraction will be dismissed as moot.

mandatory safety check before commencing his journey to a Virginia landfill to deliver the load. He testified credibly that the transfer station did not permit truckers to perform their safety checks on its grounds and, therefore, that he stopped on 1st Street, at the location where Mr. Williams observed him, to make the check before getting on the highway. He testified further that his inspection took between two and three minutes and that he discovered an under-inflated tire on the rear of the trailer. According to Mr. Galeano, the process of inflating the tire to its proper pressure took an additional 10 to 15 minutes and required operation of the truck's air compressor. The compressor can operate only if the truck's engine is running. To inflate the tire, Mr. Galeano first checked the compressor's pressure on the gauge in the cab of the tractor, which didn't take much time. He then connected a hose to the air tank located between the tractor and the trailer and held the hose to the air connection on the tire.

Mr. Galeano's testimony that he needed to inflate a tire on the trailer, and that the engine needed to be running for him to do so was credible. I find, however, that he had finished inflating the tire by the time Mr. Williams observed him. As demonstrated by the weight ticket from the transfer station (Respondents' Exhibit 203), Mr. Galeano left the transfer station at 8:18 AM. The transfer station is located at 1140 3rd Street, N.E., two blocks from where Mr. Williams observed the truck. Because the process of checking the vehicle and inflating the tire took about 15 minutes, Mr. Galeano had sufficient time to drive to 1st Street and to complete that task before Mr. Williams observed him at 8:50. I therefore credit Mr. Williams' testimony, as corroborated by his contemporaneous notes (Petitioner's Exhibit 101), that Mr. Galeano was sitting in his vehicle during the six minutes that Mr. Williams observed him.

Respondents filed their plea on April 19 in response to the April 13 default order. Although the Notice of Infraction was served by mail on March 9, as recited in the certificate of service, it is undisputed that Respondents did not receive the service copy until April 21.

III. Conclusions of Law

By idling the engine of a truck for more than three minutes while parked, Respondent violated 20 DCMR 900.1. Section 900.1(b) allows idling in excess of three minutes for the operation of “power takeoff equipment,” *i.e.*, equipment powered by a truck’s engine. *DOH v. M.A.T.T. Trucking*, OAH No. I-00-10367 at 3 (Final Order, June 16, 2001); *DOH v. Best Trucking Co.*, OAH No. I-00-10056 at 3-4 (Final Order, July 28, 2000). The compressor described by Mr. Galeano qualifies as “power takeoff equipment,” but he had finished inflating the tire and there is no evidence that he was operating the compressor during the six minutes that Mr. Williams observed the engine idling. Therefore, the “power takeoff equipment” exception does not apply, and Respondents are liable for the violation.

The fine for violating § 900.1 is \$500 for a first offense. 16 DCMR 3224.3(aaa), as added by the Motor Vehicle Excessive Idling Fine Increase Amendment Act of 1999, D.C. Law 13-35 (Effective October 7, 1999); 46 D.C. Reg. 8699 (October 29, 1999); 46 D.C. Reg. 6017 (July 23, 1999). I will impose a fine in that amount.

The Civil Infractions Act, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate “good cause” for failing to answer it within twenty days of the date of service by mail. If a party can not make such a showing, the statute

requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A), 2-1802.02(f). Because they did not receive the Notice of Infraction until well after the twenty-day deadline had passed, and because they filed an answer promptly after receiving the April 13 order, Respondents have demonstrated good cause for failing to answer within the deadline. Accordingly, they are not liable for the statutory penalty.

IV. ORDER

Based upon the forgoing findings of fact and conclusions of law, it is this _____ day of _____, 2002:

ORDERED, that the second Notice of Infraction served by the Government (No. I00-11072) is **DISMISSED AS MOOT**; and it is further

ORDERED, that the \$500 penalty for failing to file a timely response that was assessed by the order dated April 13, 2001 is **VACATED**; and it is further

ORDERED, that Respondents, who are jointly and severally liable, shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at

the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

FILED 04/22/02

John P. Dean
Administrative Judge